

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No. 32819 of 2012

ORDER:

Questioning the inaction of the respondents in not paying the compensation in respect of structures in land admeasuring Ac.0.18 cents situated in Survey No.601/2A acquired for the purpose of fore-shore submersion in the SKKYR Project (Sri Karatam Krishna Murthy Yerra Kalva Reservoir Project), Jangareddigudem, the present Writ Petition came to be filed.

The facts which lead to filing of the present Writ Petition are as under :

The petitioner claims himself to be the absolute owner and possessor of agricultural land to an extent of Ac.3.91 cents in R.S. No.601/2A of Tadvai village, Jangareddigudem Mandal, West Godavari District. The respondents acquired Ac.14.65 cents in R.S. Nos.601/2A, 602/2B and 602/2C of Tadvai village, Jangareddigudem Mandal, West Godavari District including the land of the petitioner to an extent of Ac.3.91 cents, wherein he has raised structures like RCC building, bathroom and toilet, thatched house and tiled house, for the purpose of fore-shore submersion area of the SKKVR project at Jangareddigudem. The material on record shows that the lands sought for acquisition was surveyed by the Special

Surveyor (LA) Jangareddigudem and the SD record was pre-scrutinized by the Deputy Inspector of Survey and Land Records, Revenue Divisional Officer's office, Kovvur on 23.01.1996. The extent of the land referred to above was adopted in the draft declaration and in the notices issued under Section 9(1) and 10 and 9(3) of the Land Acquisition Act. It is said that none of the parties raised any objection either for the measurement of the lands at the time of the survey measurements or at the time of Award enquiry. A draft Award came to be passed on 31.12.1997 awarding compensation to the entire extent of Ac.14.65 cents inclusive of the land of the petitioner. The Award shows that total amount of Rs.4,00,869/- was awarded to the petitioner. Prior to passing of the Award, the 5th respondent who is the Executive Engineer, Irrigation Division, Eluru issued a letter dated 24.05.1996 informing the Land Acquisition Officer to delete an extent of Ac.0.18 cents from the total extent of Ac.3.91 cents, consisting of RCC building, bathroom and toilet, thatched house and tiled house, on the ground that the constructions on the above land are situated adjacent to the donka road which are not found to be submerged in Full Reservoir Level (FRL). A revised schedule for the actual land required i.e., Ac.14.47 (Ac.14.65 – Ac.0.18) in Sy.No.601/2 was enclosed for acquisition. Four months later i.e., on 23.09.1996, the Executive Engineer informed

the Land Acquisition Officer that he tookover advance possession of the total extent of Ac.14.65 cents on 08.11.1995 itself and also stated that after receipt of funds from the Government the same would be placed before the Special Tahasildar/Land Acquisition Officer. The averments in the affidavit show that pursuant to the proceedings of the 5th respondent, the petitioner received compensation under protest as per the Award dated 31.12.1997. The petition averments further show that he was paid compensation to the trees in the supplement Award No.11/98 dated 12.06.1998. While things stood thus, Full Reservoir Level (FRL) of the tank has been increased from 81.05 meters to 83.5 meters in the year 2004, due to which all the four structures got submerged. It is stated that inspite of representations being made no compensation is paid to the submerged structures, hence the present Writ Petition.

The second respondent i.e., the Revenue Divisional Officer, and Land Acquisition Officer, SKKYR Project, Jangareddigudem, West Godavari District filed his counter stating that after receipt of the application from the petitioner, the structures were inspected and proposals were submitted by him to the Collector, West Godavari, Eluru vide ROC.No.A/7/2007, dated 11.07.2011 for according sanction of Rs.19,77,024/- towards structural value and interest thereon. It has been further stated in

para 5 of the counter that funds are yet to be released by the Irrigation Department and as soon as the funds are received, the amount would be disbursed to the petitioner. He further admits about the existence of structures in the land admeasuring Ac.0.18 cents which was acquired under Y.R. Project. He also admits about payment of compensation for the land and trees in the said land. The averments in the counter further disclose that 5th respondent was requested to inspect the lands and send his report as to whether the petitioner is entitled for compensation for the constructions said to have been sub-merged due to raising of Reservoir level. Thereupon the lands were got inspected by then Executive Engineer and a report vide letter No.4358/JTO/2011, dated 20.05.2011 was submitted furnishing the value of the structures to a tune of Rs.6,04,782/-. He categorically admits that compensation for structures was held up, as the requisition Department did not provide the funds.

The Fifth respondent filed his counter stating that since there was no requisition from the Department for acquiring structures of RCC buildings, bathroom, toilet, thatched house and tiled house of the petitioner, question of payment of compensation for the same does not arise. It is stated that the then Executive Engineer, Jangareddigudem sent revised requisition for deleting

Ac.0.18 cents from the original requisition of Ac.14.65 cents on 24.05.1996, which was prior to passing of the Award dated 31.12.1997 and as such the act of Land Acquisition Officer in paying the money even to the said land would not make them liable to compensate for the structures. Insofar as the documents, which are relied upon by the learned counsel for the petitioner, it has been stated that the same cannot be done since they are purely internal communication between the two Departments and the same are not binding on the parties. He further submits that there is an abnormal delay in approaching this Court claiming compensation as the Writ Petition is filed 6 to 7 years after the sub-mergence of the structures. In view of the above, it is stated that the petitioner is not entitled for any compensation.

The first objection which was raised by the learned counsel for the respondents is that in the absence of any notification for acquisition of Ac.0.18 cents of land, payment of compensation for the land or the structures raised therein would not arise. He placed on record the draft notification dated 12.12.2003 issued under Section 4(1) of the Land Acquisition Act. The learned counsel for the petitioner submits that the question of issuing a notification in the month of December 2003 would not arise since it would already notified in the notification issued in the year 1995. A perusal of the Award No.11/97

dated 31.12.1997 clearly shows that a survey was done by the Deputy Inspector of Survey and Land Records, Revenue Divisional Officer's office, Kovvur on 23.01.1996. The draft notification was issued under 4(1) of the Land Acquisition Act, which was approved in G.O.Rt.No.311 Irrigation and CAD (Irr. Wing. Irr.II) Department, dated 04.04.1997 and the same was published in the official gazette on 15.05.1997. A copy of the notification was published in local news paper i.e., "Visalandhra" and "Prajasakthi" on 07.06.1997. The contents of the notification were also affixed on the notice board of the Gram Panchayat on 20.06.1997. The notification and acquisition was in respect of Ac.14.65 cents of land which is inclusive of Ac.3.91 cents of land belonging to the petitioner. In the month of December, 1997 an Award was passed awarding compensation to the land and trees. When a notification was already issued and published in the Gazette, the question of re-notification of the same in the year 2003 would not arise, moreso when compensation for land and trees was already paid in 1997 itself. Therefore, the argument of the learned Government Pleader that the Writ Petition has to be dismissed in the absence of any notification for acquisition of the said land, cannot be accepted.

The next question that falls for consideration is "Whether the petitioner is entitled to rely on certain

documents, which were filed along with the Writ Petition and whether he is entitled for compensation?”

It is nodoubt true that the documents which are relied upon by the petitioner relates to correspondence between the authorities of the two departments. But at the same time, it is also to be noted that most of the documents were obtained under the Right to Information Act, 2005. The letter dated 15.02.2012 written by the Revenue Divisional Officer to the Collector, West Godavari District, Eluru; the notes of inspection dated 07.12.2011 submitted by the Revenue Divisional Officer, and Land Acquisition Officer, SKKYR Project, Jangareddigudem, West Godavari District were obtained under the Right to Information Act. Be that as it may, the counter filed by 2nd respondent itself shows that after referring to all the documents, the Revenue Divisional Officer admits existence of structures in Ac.0.18 cents of land, and payment of compensation being made only to the land and tress. It is also admitted by 2nd respondent that the funds are to be provided by the Government and the amount will be paid as soon as the funds are furnished by the requisition Department. Even assuming for the sake of arguments that those documents cannot be looked into but the admissions in the counter itself show that the petitioner is entitled for compensation. However, it may be useful to refer to certain documents.

Before referring to the documents, it is to be noted that initially the Full Reservoir Level was 81.05 meters which was subsequently raised to 83.05 meters. The letter dated 11.08.2010 obtained under Right to Information Act and which is marked as Ex.P-6, refers to acquisition of land to an extent of Ac.3.91 cents belonging to the petitioner for fore-shore sub-mersion under SKKYR Project and an Award dated 31.12.1997 and supplemental award dated 12.06.1998 came to be passed awarding compensation excluding the structure value. The said letter also refers to a representation made by the petitioner seeking compensation for the structures which got sub-merged due to raising of tank level from 81.05 meters to 83.05 meters. On 02.02.2011 the Executive Engineer, Irrigation Division, Eluru wrote a letter to the Executive Engineer, R & B Division, Eluru, requesting to divert field officials to the above site for valuation of the structures so as to pay compensation to the concerned owner. The letter dated 20.05.2011 written by Executive Engineer, R & B, West Godavari Division to the Executive Engineer, Irrigation Division, Eluru reveals furnishing of valuation of four structures pertaining to the petitioner at Rs.6,04,782/-. Valuation of the structures after depreciation were annexed to the said letter. Thereafter, on 11.07.2011 the Revenue Divisional Officer & Land Acquisition Officer, SKKYR Project Unit, Jangareddigudem, wrote a letter to the Collector, West

Godavari District, Eluru, (obtained under R.T.I. Act) stating that land to the extent of Ac.3.91 cents belonging to the petitioner was acquired for fore-shore sub-mersion area of Yerrakalva Reservoir under Y.R. Project under Award No.11/97 dated 31.12.1997 and supplemental Award No.11/98 dated 12.06.1998. The above two Awards also disclose payment of compensation which includes structure value and tree value. After referring to the letters written by the Executive Engineer, JR & YR Division, Jangareddigudem, and the Award passed by the Special Tahasildar, Jangareddigudem, the letter dated 11.08.2010 addressed by the R.D.O., & Land Acquisition Officer, SKK.Y.R.Project Unit, Jangareddigudem to the Executive Engineer, Irrigation Division, and the letter of Executive Engineer, Irrigation Division dated 02.02.2011 show that the petitioner is entitled for payment of Rs.19,77,024/- which is inclusive of the interest and accordingly sought for approval of the same. In fact even on 15.02.2012 (obtained under R.T.I. Act) the Revenue Divisional Officer & Land Acquisition Officer, SKKYR Project, wrote a letter to the Collector, West Godavari, Eluru with regard to payment of compensation at an early date. The notes of inspection dated 07.12.2011 indicate existence of these structures at the site. From the documents referred to above; the admissions made in the counter filed by 2nd respondent and having regard to the fact that 5th

respondent is only disputing payment of compensation since they have not asked for acquisition of Ac.0.18 cents of land with structures, I am of the opinion that the petitioner is entitled for the compensation for the structures referred to above, which got sub-merged due to raising of tank level from 81.05 meters to 83.05 meters.

The learned counsel for the respondent tried to contend that Court cannot accept the application which is made at a belated stage. It is his case that since the proceedings of acquisition of structures including the land took place in the year 2004-05, the authority cannot entertain an application nearly after 7 years from the date of such acquisition. An issue identical to the case on hand came up for consideration before the Apex Court in **Tukaram Kana Joshi and others v. M.I.D.C. and others**^[1], wherein the Apex Court held as under :-

“7. The State, especially a welfare State which is governed by the Rule of Law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience.

8. The question of condonation of delay is one of discretion and has to be decided on the basis of the facts of the case at hand, as the same vary from case to case. It will depend upon what the breach of fundamental right and the remedy claimed are and when and how the delay arose. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226, nor is it that there can never be a case where the Courts cannot interfere in a matter, after the passage of a certain length of time. There may be a case where the demand for justice is so compelling, that the High Court would be inclined to interfere in spite of delay. Ultimately, it would be a matter within the discretion of the Court and such discretion, must be exercised fairly and justly so as to promote justice and not to defeat it. The validity of the party's defence must be tried upon principles substantially equitable. (Vide: P.S. Sadasivaswamy v. State of T.N. AIR 1974 SC 2271; State of M.P. & Ors. v. Nandlal Jaiswal & Ors., AIR 1987 SC 251; and Tridip Kumar Dingal & Ors. v. State of West Bengal & Ors., (2009) 1 SCC 768;)

No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the Petitioners. (Vide: Durga Prasad v. Chief Controller of Imports and Exports & Ors., AIR 1970 SC 769; Collector, Land Acquisition, Anantnag & Anr. v. Mst. Katiji & Ors., AIR 1987 SC 1353; Dehri Rohtas Light Railway Company Ltd. v. District Board, Bhojpur & Ors., AIR 1993 SC 802; Dayal Singh & Ors. v. Union of India & Ors., AIR 2003 SC 1140; and Shankara Co-op Housing Society Ltd. v. M. Prabhakar & Ors., AIR 2011 SC 2161)

12. The appellants have been seriously discriminated against qua other persons, whose land was also acquired. Some of them were given the benefits of acquisition, including compensation in the year 1966. This kind of discrimination not only breeds corruption, but also dis-respect for governance, as it leads to frustration and to a certain

extent, forces persons to take the law into their own hands. The findings of the High Court, that requisite records were not available, or that the appellants approached the authorities at a belated stage are contrary to the evidence available on record and thus, cannot be accepted and excused as it remains a slur on the system of governance and justice alike, and an anathema to the doctrine of equality, which is the soul of our Constitution. Even under valid acquisition proceedings, there is a legal obligation on the part of the authorities to complete such acquisition proceedings at the earliest, and to make payment of requisite compensation. The appeals etc. are required to be decided expeditiously, for the sole reason that, if a person is not paid compensation in time, he will be unable to purchase any land or other immovable property, for the amount of compensation that is likely to be paid to him at a belated stage.”

From the judgment referred to above, it is clear that there is no hard and fast rule as to when the discretion has to be exercised but the same has to be exercised judicially and reasonably. It has been held that when the claim made is legally sustainable, the delay should be condoned. Since the claim made in the instant case is legally sustainable, the delay can be condoned.

For the aforesaid reasons, I am of the view that petitioner is entitled for compensation as calculated by the Land Acquisition Officer and accordingly the respondents are directed to take steps to release the compensation amount as early as possible preferably within a period of 16 to 20 weeks from the date of receipt of order.

With the above direction, the Writ Petition is allowed. No order as to costs. As a sequel to it, miscellaneous petitions pending if any, in this Writ Petition,

shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 01.12.2015

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[\[1\]](#) 2013(2) ALD 7 (SC).